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Supreme Court of the United States

OCTOBER TERM, 1949

NO. 509

JAMES BUTEAU,
Petitioner

vs.

STATE OF CONNECTICUT,
Respondent

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

I

Statement of the Case

Facts in amplification and clarification of Petitioner's Summary Statement will appear during the course of the Argument herein. However, at this point it should be noted that in his attack upon the admission in evidence of the confessions of August 30, 1947, and September 3, 1947, Petitioner makes no claim that these confessions are untrue. On the contrary, he corroborated their truth in his testimony at the trial (Opinion below, R. 2250) and confirmed it further in his Claims of Proof (R. 474-483).

II

Argument

Summary of the Argument

Point A

The confessions were altogether voluntary.

Point B

The arrest and detention were legal.

1. The warrant was properly issued by the Coroner rather than by the Deputy Coroner.
2. In view of his presentation before the Coroner, there was no need to present Petitioner before a Court.
3. The State Police Barracks at Bethany was a "proper place" of confinement.
4. The delay in returning Petitioner to jail on September 3, 1947, did not constitute illegal detention.

Point C

The Supreme Court of Errors was correct in holding that the circumstances previous to Petitioner's appearance before the Deputy Coroner had no relation to his confessions.

Point A

The confessions were altogether voluntary.

The facts and circumstances as conceded by Petitioner or as resolved by the State's adjudication are not such as have led this Court to hold that the conviction of accused persons on the basis of forced confessions was in violation of the Due Process Clause of the United States Constitution (See Opinion below, R. 2249).

The Petitioner here is a mature, intelligent and experienced individual.[1] With his record of three earlier convictions he was no novice in his contacts with police or with criminal procedure (R. 237-238, 509). On the very day of his arrest he was lawfully committed to custody by a committing magistrate (see infra Point B). At no time was he handcuffed or bound, roughly or cruelly treated, or subjected to force or violence, either physical or psychological (R. 566). In fact, Petitioner at the trial acknowledged the "very friendly atmosphere between the officers and I" (R. 2159). He was placed in one of the three cells maintained for the confinement of prisoners in a modern State Police barracks (R. 589). He was fed the same meals as were furnished to officers on duty, ate in the officers' dining room (R. 589) and in public restaurants (Finding Par. 51, R. 535), and with good appetite (Finding Par. 20, R. 665). And before any confession whatsoever was made by him, his sister had been permitted to visit him (R. 534-535).

On first being questioned by the Commissioner of State Police, the Petitioner was warned of his Constitutional right against self-incrimination (R. 531). Before taking the statement of August 30th, the Coroner advised him that he had the right to refuse to give testimony and that any testimony he gave might be used against him (R. 536). Similar warning was given by Captain Carroll at the outset of the interview of September 3rd (R. 665).

From his arrest on August 23rd to his first inculpatory statement on August 28th, the question periods were relatively short (R. 589) and the interludes long. Although Petitioner talks glibly of "persistent questioning" and "inquisitorial procedure" (Petitioner's Brief, pg. 17), his own facts fail to support him. His brief necessarily acknowledges the *complete respite from questioning during the first forty-eight hours* of his confinement to

[1]In this connection there should be noted his use and definition of the word "recidivist" (R. 2153-2156); the corrections of spelling and grammar made by him in his statement (R. 2187-2191); his typing of his own statement on one occasion (R. 223).

Bethany Barracks (Petitioner's Brief, pg. 3-5). And then following a question period that was neither intensive nor protracted, (R. 577, Par. 42, R. 534), *another three full days elapsed before Petitioner was again interrogated,* and that questioning took place in the presence of his sister (Finding, Par. 42-43, R. 534, R. 221-222. See also Petitioner's Brief pp. 5-6). On this occasion, it should be noted, Petitioner himself prolonged the interview by calling the officers back after they had departed (R. 223, 238), and then for the first time he confessed his participation in the fatal robbery (Petitioner's Brief, pg. 31; Par. 47, R. 535).[2]

On the day following this confession, in an obvious effort to reconcile differences and establish the truth, the officers arranged for the confrontation of Buteau and his accomplice Berard. Although Petitioner was present for about seven hours, there is no evidence of systematic, persistent interrogation (R. 589). For a large part of this interview, Petitioner subjected Berard to questions (R. 371-374), and his questioning again constituted an explicit acknowledgement of participation in this attempted robbery (R. 2169-2170).

On the next following day, August 30th, the Coroner's examination was made, the admission of which in evidence Petitioner claims has denied him due process of law. This questioning was done, not by relays of police officers, but by the Deputy Coroner in the pursuance of his statutory duty (See infra Point B); not in secret, but with his secretary making the official public record. Can this confession be held to be "the fruit of inquisitorial procedure on the part of the police (Petitioner's Brief, pg. 17), when

[2]Neither on this occasion nor in his confessions of August 30th and September 3rd nor at the trial did Petitioner admit firing any of the fatal shots. His accomplice Berard admitted firing one shot and claimed Petitioner fired the remaining four. The State's ballistics expert testified that two guns were used in firing these bullets. Of course. Petitioner's participation even to the limited extent admitted by him renders him guilty of murder (Opinion below, R. 2243).

in fact the Petitioner had himself summoned the police in order to thrust this same fruit upon them two days before?

The confession of September 3rd which is also claimed to have been erroneously admitted is even more obviously the product of Petitioner's will rather than of police pressure. For four full days immediately preceding this date Petitioner had been free from questioning. His place of confinement during that time was no longer the State Police Barracks, but the county jail. On this date Petitioner was brought to Court, and in his presence the State's Attorney asked the Court to summon a Grand Jury to consider indictments for this murder and to appoint a Special Public Defender for the Petitioner. Almost immediately thereafter, notwithstanding that he knew that the appointment of his counsel was imminent (Opinion below R. 2246), Petitioner himself initiated a discussion (R. 397) with Captain Carroll by stating that he wished to correct his earlier claims and now to acknowledge his ownership of the Beretta pistol that was found in the room of his accomplice. By reason of this disclosure it was agreed that after supper Petitioner would give a corrected statement which constitutes the confession of September 3rd (Par. 18-22, R. 665).

Petitioner never asked for counsel (Opinion below, R. 2246, Finding Par. 18, R. 531; Finding Par. 58, R. 536). His indifference to such representation is well demonstrated by his eagerness to talk directly after the Court "had informed him that a competent, experienced attorney would be appointed to look after his interests" (Opinion below, R. 2246).

Particularly striking proof of the voluntary character of these confessions can be had by reading them (R. 1553, et seq). From them it can readily be recognized that Petitioner was in full possession of "mental freedom" to confess to or deny his suspected participation in this crime. *Lyons* vs. *State of Oklahoma,* 322 U. S. 596; 64 S. Ct. 1208.

It cannot reasonably be contended that the officers should shun Petitioner when on August 28th he summoned them to make his

first incriminating statement, and when on September 3rd he expressed a desire to make a correction in his earlier statements. We submit that if the denial of due process results from the failure to observe that fundamental fairness which is essential to the very concept of justice (*Lisenba* vs. *People of California*, 314 U. S. 219; 62 S. Ct. 280), Petitioner is without standing in this Court. For throughout these proceedings "every consideration was shown to defendant which one arrested for first degree murder could have reasonably expected" (Opinion below, R. 2247).

Point B

The arrest and detention were legal.

1. The warrant was properly issued by the Coroner rather than by the Deputy Coroner.

Petitioner claims that for the Coroner to issue the warrant constituted an abuse of power, since this inquest was being conducted by the Deputy Coroner. True, the Deputy Coroner, acting in the absence of the Coroner, had visited the scene on the fatal night of October 25, 1946. However, he had questioned no witnesses and had taken no testimony. Such limited activity by the Deputy Coroner does not give the Petitioner a vested right to his services so as to preclude the Coroner from acting in the matter at all times thereafter. On the date of arrest some nine months later, the Coroner was available. Accordingly, it was altogether proper that these new devolepments should be referred to him, and that he, rather than his Deputy, should issue the warrant.

During the next following week the Coroner was again absent from the county (R. 1989), and pursuant to Section 258, General Statutes, Revision of 1930 (Appendix infra), his Deputy proceeded with the inquest. Merely because it thus eventuated that, after issuing his warrant the Coroner himself did not conduct the inquest, would not invalidate the warrant so issued nor render its issuance an abuse of power.

2. In view of his presentation before the Coroner, there was no need to present Petitioner before a Court.

Petitioner claims that following his arrest on Saturday, August 23rd, he should have been presented for hearing in the Meriden Municipal Court. However, in presenting Petitioner to the Coroner, the arresting officers acted in full compliance with law. Our Connecticut statute, Section 54H, Cumulative Supplement 1945, provides that "any person so arrested shall be presented with reasonable promptness before proper authority." The Coroner is such "proper authority." He is a "committing magistrate" (Opinion below, R. 2248).

Section 255 of the Connecticut General Statutes, Revision 1930, (Appendix infra) specifically empowers him to "order or cause any person or persons whom he has good reason to suspect of having criminally caused the death in regard to which he is holding an inquest to be arrested and committed to the county jail or other proper place." His process is competent to hold such persons throughout the inquest and for twenty-four hours after his finding. Accordingly, having once been arrested and held on the Coroner's warrant, there was no need in law or in fact to present Petitioner to a Court as advocated by him. If the Legislature had intended that such presentation must be to a Court, it could have and would have said so instead of using the term "proper authority."

Petitioner's statement that "accepted procedure" would require presentation before the Municipal Court of Meriden (Petitioner's Brief, pg. 24) has no basis in fact. In presenting this defendant to the Coroner for commitment, there was no deviation from the long accepted practice in murder cases in this jurisdiction; and a practice explicitly authorized by the Statutes of this State (See Sections 246, 247, 249, 255, 256, Appendix infra). The many phases of the investigation were diligently pursued during the week following the arrest of Petitioner and there was no unreasonable delay in any of the proceedings prior to the examination of Petitioner by the Deputy Coroner on August 30th (Opinion below, R. 2248).

3. The State Police Barracks at Bethany was a "proper place" of confinement.

Petitioner claims further that he should have been committed to the County Jail rather than to the State Police Barracks.

Section 255, General Statutes 1930 specifically empowers the Coroner to commit prisoners "to the county jail or other proper place." This obviously contemplates the selection of places in addition to the county jail. In the exercise of the discretion thus expressly vested in him, the Coroner determined the State Police Barracks at Bethany to be the proper place for the detention of this defendant.

At one point Petitioner concedes that Bethany Barracks was a proper place of confinement (R. 697), but complains of the differential treatment in the confinement of Albert Berard at the county jail (Part K, R. 696). Just as the Coroner can order witnesses kept separate until after they have testified (Section 255, General Statutes 1930), so could he order this defendant and his accomplice held in separate places so that they would not "get messages to each other" (Part N, R. 699; R. 46).

If the Barracks was chosen with the sinister purpose of affording "the State Police and the State's Attorney and his agents opportunity for the further questioning of the Petitioner" (Petitioner's Brief, pg. 24-25), these officials failed singularly to avail themselves of this opportunity. As has heretofore been pointed out (Point A, supra), they made no effort whatsoever to question Petitioner during the forty-eight hours following his confinement at the Barracks and then allowed another seventy-two more hours to elapse before again questioning him.

4. The delay in returning Petitioner to jail on September 3, 1947, did not constitute illegal detention.

The lack of substance of this Petition is glaringly revealed in this claim. Petitioner here contends that the failure to return him to jail promptly at the conclusion of the Court session of September 3rd constitutes illegal detention. It appears that the

Court session adjourned near noon and Petitioner was then taken out to dinner (Par. 15-16, R. 665). Following dinner there was some questioning of Petitioner from time to time and Petitioner expressed a desire to change a statement he had previously made (Par. 17-18, R. 665). It was this voluntary offer on his part which resulted in further delay, both for supper and for the preparation of the statement (Par. 19-22, R. 665). To label this situation "illegal detention" is a transparent misnomer.

Point C

The Supreme Court of Errors was correct in holding that the circumstances previous to Petitioner's appearance before the Deputy Coroner had no relation to his confession and need not be considered.

The claim of illegal detention at the time of the Coroner's examination or when he made the confession of September 3rd is extremely tenuous (Opinion below, R. 2247).

Whether his commitment on August 23rd was by a Court or by a Coroner; whether the signature on the warrant was that of the Coroner or of his Deputy; whether his confinement during the preceding week was in county jail or a police barracks, had no effect on his appearance before the Deputy Coroner on August 30th. On that date, Petitioner was altogether unaware of these alleged irregularities, and at his trial he made no claim that these circumstances induced him to confess. The action of the Deputy in ordering Petitioner to appear for examination was independent of and bore no relation to the preceding circumstances. Without reference to any of these circumstances, he had authority to compel the attendance of the Petitioner as a witness or as a suspect in the investigation he was then conducting (Section 255, Connecticut General Statutes, Appendix).

Even more remote are these circumstances in relation to the confession of September 3rd. The additional feature of "illegal detention" on that date was of Petitioner's own procurement (See Point B 4, supra).

However, even if there were any illegality of detention, under the Connecticut rule, that fact would invalidate a confession only if it has some casual relation to the procurement of the confession. *State* vs. *Zukauskas,* 132 Conn. 450, 458; 45 A. 2nd 289.

The rule followed in the Federal Courts is not obligatory upon State Courts as has been stated in *Townsend* vs. *Burke,* 334 U.S. 736, 738; 68 S. Ct. 1252.

Here it is obvious that the events of the preceding week did not bring about either the confession of August 30th or of September 3rd.

Conclusion

The petition for certiorari does not present sufficient substance or merit to warrant review by this Court. There was no denial of due process of law in the procurement or use of the Petitioner's confessions.

It is therefore respectfully submitted that this case is not a proper one for review by certiorari in this Court, and that the Petition for a Writ of Certiorari should be denied.

Dated January 24, 1950.

ABRAHAM S. ULLMAN,
ARTHUR T. GORMAN,
Counsel for Respondent.

APPENDIX

Sec. 54H. Arrest without Warrant. Sheriffs, deputy sheriffs, constables, borough bailiffs, police officers, special protectors of fish and game and railroad and steamboat policemen, in their respective precincts, shall arrest, without previous complaint and warrant, any person for any offense in their jurisdiction, when such person shall be taken or apprehended in the act or on the speedy information of others, and members of the state police department or of any organized local police department shall arrest, without previous complaint and warrant, any person whom such officer has reasonable grounds to believe has committed or is committing a felony. Any person so arrested shall be presented with reasonable promptness before proper authority.

Sec. 246. Autopsy. After a view and inquiry had by the coroner, if he shall have reason to suspect that the death was caused by the criminal act, omission or carelessness of another or others, he may cause an examination or autopsy to be made of the body by the medical examiner or by some other competent surgeon or physician, who shall reduce or cause to be reduced to writing, either at the time of making such examination or autopsy or immediately thereafter, and when practicable in the presence of the body, every fact and circumstance found by such examination or autopsy which tends to show the identity or condition of such body, and the time, manner and cause of such death; which writing he shall subscribe under oath and deliver to the coroner. The taking of the testimony of such medical examiner, physician or surgeon, and of any other person or persons whom the coroner may find it necessary to examine, shall constitute an inquest. The fees of any physician or surgeon for services rendered under the provisions of this section shall be certified and paid in the manner prescribed in Section 262.

Sec. 247. Coroner's jury. The coroner may, by warrant, cause a jury of six judicious men of his county to be summoned before him to assist him in his investigation, which jury shall be by him sworn to diligently inquire under his direction into the cause and manner of such death and to present to him on their oaths and over their signatures a true verdict thereof. The coroner shall instruct such jurors in their duties and as to all questions of law that may properly arise at such inquest; he may adjourn such inquest to meet again at such time and place as he shall think proper and he may order any inquest or any part thereof to be held in private, in which case only

the persons designated by him shall be allowed to remain in the room or place where such inquest is being held.

Sec. 249. Return of result of inquest. The coroner shall reduce to writing, and shall, within ten days after any inquest has been held, return, the testimony of all witnesses examined in the inquest to the clerk of the superior court in his county, together with his report of the inquest, which shall include his finding or the verdict of the jury, and he shall also return to said clerk all certificates sent him by the medical examiner in accordance with section 244 and all similar certificates by him made.

Sec. 255. Power of Coroner in securing evidence. For the purpose of securing evidence, the coroner may enter any and all places in his county; shall have power to issue a warrant for a jury inquest, to compel the attendance and testimony of witnesses by subpoena and capias issued by him or other proper authority and to punish for contempt to the same extent as justices of the peace may in criminal cases; he may order and cause witnesses to be kept separate so that they cannot communicate with one another until they shall have testified; he may order or cause any person or persons whom he has good reason to suspect of having criminally caused the death in regard to which he is holding an inquest to be arrested and committed to the county jail or other proper place; he shall have power to take bail in such cases or to commit without bail when in his opinion the person arrested is guilty of a capital offense and when the proof against such person is evident or the presumption great. When bail shall be taken, it shall be to the state and shall be conditioned for the appearance of the person so arrested before the superior court for such county at its next criminal term. Any person so arrested and admitted to bail may be rearrested and committed by the coroner without bail when, in the opinion of the coroner, the proof shall be evident or the presumption great that such person is guilty of a capital offense. In no case shall any person be kept under arrest by an order from a coroner for a longer time than twenty-four hours after the finding of a verdict by the jury or after the finding by the coroner in such inquest; and, at any time before such finding, whenever the grounds on which a person is so arrested shall cease to exist in the opinion of the coroner, he shall order the release of such arrested person.

Sec. 256. Coroner may issue process. All process, orders and papers issued by a coroner may be directed to any proper officer, and such officer shall serve such papers and process as directed, and,

when requested, shall remain in attendance on such coroner and execute his lawful orders during any inquiry or inquest.

Sec. 258. Deputy coroner. Each coroner shall, for such time as he may designate, appoint a deputy, who shall only act as such in case of the absence from his county or inability of the coroner, and, when so acting, such deputy coroner shall have the same powers and duties as are given to coroners and, while so acting, shall receive the same fees as the coroner in like cases.